

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Pasig City

**IN THE MATTER OF THE  
APPLICATION FOR THE  
APPROVAL OF THE LEVEL OF  
MARKET FEES FOR THE  
CALENDAR YEAR 2023 FOR  
THE PHILIPPINE WHOLESALE  
ELECTRICITY SPOT MARKET**

**ERC CASE NO. 2023-008 RC**

**INDEPENDENT ELECTRICITY  
MARKET OPERATOR OF THE  
PHILIPPINES, INC. AND  
PHILIPPINE ELECTRICITY  
MARKET CORPORATION,**  
*Applicants.*  
**x-----x**

**Promulgated:**  
February 21, 2023

**ORDER**

On 30 January 2023, the Independent Electricity Market Operator of the Philippines, Inc. (IEMOP) and Philippine Electricity Market Corporation (PEMC) filed a *Joint Application* dated 18 November 2022, seeking the Commission’s approval of the level of market fees for Calendar Year (CY) 2023 for the Philippine Wholesale Electricity Spot Market (WESM), with motion for issuance of provisional authority.

The pertinent portions of the said *Joint Application* are hereunder quoted:

1. This is an Application jointly filed by IEMOP and PEMC for the approval of the level of market fees for the Calendar Year (CY) 2023 pursuant to Section 30 of Republic Act No. 9136, also known as the "Electric Power Industry Reform Act of 2001" or "EPIRA" which reads, in part, as follows:

*"The cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed on all members: Provided,*

*That such charge shall be filed with and approved by the ERC."*<sup>1</sup>

2. Applicant IEMOP is a non-stock, non-profit corporation duly organized and existing in accordance with Philippine laws, with principal office at the 9<sup>th</sup> Floor Robinsons-Equitable Tower, ADB Avenue corner Poveda Street, Ortigas Center, Pasig City. Applicant is represented herein by its President and CEO, Atty. Richard J. Nethercott, who is duly authorized by the IEMOP Board of Directors to file this Application jointly with PEMC and represent the Applicant IEMOP in all stages of the proceedings, as evidenced by the Secretary's Certificates hereto attached as Annexes "A" to "A-1" and made an integral part of this Application;
3. Applicant PEMC is a non-stock, non-profit private corporation duly organized and existing in accordance with the laws of the Philippines with principal office address at the 18<sup>th</sup> Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City. It is represented in this Application by its President, Elvin Hayes E. Nidea, who has been duly authorized by the Applicant PEMC Board of Directors ("PEM Board") to file this Application jointly with IEMOP and represent the Applicant PEMC in all stages of the proceedings, as evidenced by the Secretary's Certificate hereto attached as Annexes "B" to "B-1".

*Transition to the Independent Market Operator (IMO)*

4. The establishment of the WESM was mandated of the Department of Energy (DOE) by Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA). Section 30 of the EPIRA expressly directs DOE to establish the WESM composed of the wholesale electricity spot market participants, and, jointly with electric power industry participants, promulgate the detailed rules for the WESM (WESM Rules);
5. The EPIRA and the EPIRA IRR mandate that the WESM shall be implemented by a Market Operator, which shall initially be an autonomous group market operator (AGMO) and, thereafter, the Independent Market Operator (IMO). The AGMO is to be composed of an equitable representation of the electric power industry participants, shall be responsible for the preparations for and initial operations of the WESM and shall be under the administrative supervision of the National Transmission Corporation (TRANSCO). The transition to the Independent Market Operator (the "IMO") is mandated by Section 30 of the EPIRA to occur one year after the commercial operations of the Philippine Wholesale Electricity Spot Market (the "WESM"). It is mandated that an independent entity shall be formed, which shall assume the functions, assets and liabilities of the market operator from

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<sup>1</sup> See also Rule 9 (a) of the Implementing Rules and Regulations of the EPIRA ("EPIRA-IRR").

the AGMO upon joint endorsement of the DOE and the electric power industry participants and the administrative supervision of TRANSCO shall then cease;

6. The EPIRA and the EPIRA IRR also mandate that the Wholesale Electricity Spot Market Rules (WESM Rules) shall include the procedures for the formation of a WESM governing body. In this regard, the WESM Rules provided for the creation of the Philippine Electricity Market Board (“PEM Board”), which, among other functions, shall oversee and monitor the activities of the Market Operator to ensure that the latter shall fulfill its responsibilities under the WESM Rules. The WESM Rules also provided for the creation of various governance committees and organic units within the Philippine Electricity Market Corporation (“PEMC”) to perform governance functions, including among other things, market assessment, monitoring and surveillance, enforcement and compliance, rules change and review, market audit, dispute resolution and technical assistance;
7. PEMC was incorporated as a non-stock, non-profit corporation and became the AGMO as well as the governance arm of the WESM. Its Board of Directors is the PEM Board.
8. Pursuant with the mandate of Section 30 of the EPIRA to transition to the IMO, the DOE endorsed the transition to the Independent Market Operator through its Department Circular No. 2018-01-0002 dated 18 January 2018 and entitled “Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market”<sup>2</sup>;
9. The industry participants likewise endorsed the transition through approval by the PEM Board and ratification by the members of PEMC during its membership meeting held on 06 February 2018 of the “Plan for Transition to the Independent Market Operator of the Philippine Wholesale Electricity Spot Market” (IMO Transition Plan)<sup>3</sup>;
10. Both the above-mentioned DOE Circular and IMO Transition Plan called for the formation of an independent entity that is separate from PEMC to become the IMO, and directed that the IMO be incorporated as a private, non-stock, non-profit corporation;
11. IEMOP was thereafter organized as a non-stock, non-profit private corporation that is separate from PEMC. IEMOP was incorporated to become the IMO and as such, shall assume and perform all functions of the Market Operator as set out in the EPIRA, the EPIRA IRR and the WESM Rules, market manuals, and other rules, regulations and issuances;

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<sup>2</sup> A copy of which is attached and made an integral part as Annex “C” of the *Joint Application*.

<sup>3</sup> A copy of which is attached and made an integral part as Annex “D” of the *Joint Application*.

12. On 19 September 2018, PEMC and IEMOP executed an Operating Agreement<sup>4</sup> by virtue of which, PEMC acknowledged and confirmed that IEMOP is the corporation duly incorporated in the Philippines to act as the Independent Market Operator of the WESM pursuant to the IMO Transition Plan and DOE Department Circular No. 2018-01-0002;
13. The time and date of the actual transfer and assumption by IEMOP of the market operator functions and other services defined in the Operating Agreement was on 00:00H, 26 September 2018 ("Commencement Date"). Correspondingly, the related personnel, assets, and liabilities were transferred from PEMC to IEMOP as of Commencement Date;
14. In accordance with the DOE Circular and the IMO Transition Plan, PEMC remains to be the governing body of the WESM and, as such, will continue to perform the WESM governance functions, including, among other things, the supervision and monitoring of the operations of the Market Operator in accordance with the WESM Rules. For this purpose, the Articles of Incorporation and By-Laws of PEMC were amended to, among other things, amend its Primary Purpose to emphasize its function as the WESM governing body;
15. Having assumed the functions, assets and liabilities of the market operator on the Commencement Date, IEMOP is now responsible for performing the following functions:
  - (a) Market registration;
  - (b) Pricing and scheduling, including short-term load forecasting and the provision of the dispatch schedule to the System Operator;
  - (c) Billing, settlements, management of prudential requirements, meter data management and warehousing; and
  - (d) Monitoring of trading activities in the market, management of market data and provision of market data and reports.
16. Additionally, IEMOP renders Other Services as provided in Article V and Schedule 2 of the Operating Agreement for the performance of the following functions:
  - (a) as the Central Registration Body for the retail market;
  - (b) as the Metered Quantity (MQ) Reconciliation Agent under the Interim Mindanao Dispatch Protocol (IMDP);
  - (c) facilitate collection and payment of unpaid Interim Mindanao Electricity Market (IMEM) settlement transactions, pursuant to DOE Circular DOE DC2017-05-00095 and other relevant issuances of the DOE on the IMEM;

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<sup>4</sup> A copy of which is attached and made an integral part as Annex "E" of the *Joint Application*.

<sup>5</sup> Section 1.2 and Section 2.8, Annex B, DOE Circular No. DC2017-05-0009 (04 May 2017).

- (d) training of Market Participants, PEMC, DOE, ERC, PCC and other stakeholders; and
  - (e) participant or customer support services to WESM participants aimed at facilitating their transactions in the WESM, including the (a) conduct of regular market participants update meetings, and (b) operation and maintenance of help desk facility to facilitate actions on participant queries and requests.
17. In DOE Circular No. DC2019-07-0011 dated 29 July 2019<sup>6</sup>, the DOE affirmed the designation of the IMO as the CRB;
18. PEMC remained as the Governance Arm of the WESM and is mandated to perform its functions as set out in the WESM Rules and its Market Manuals, through its Board of Directors, the PEM Board and its governance committees, as provided under Section 7 of Department of Energy Circular No. DC 2018-01-0002;
19. On 22 October 2020, the DOE issued Department Circular No. DC 2020-10-0021<sup>7</sup> entitled “Adopting Further Amendments to the Wholesale Electricity Spot Market (WESM) Rules (Provisions for the Implementation of Independent Market Operator)”. This issuance affirmed the establishment of the Independent Market Operator which shall administer the operations of the WESM in accordance with the EPIRA, its Implementing Rules and Regulations, the WESM Rules and Market Manuals, and such other relevant laws, rules and regulations;

*Authority to File Application for  
Approval of Market Fees*

20. Sections 5.5 and 7.7 of DOE Circular No. 2018-01-0002, providing for guidelines for the transition to the IMO, direct the IMO to file with the Honorable Commission the application for approval of the market fees, which shall cover the budget and revenue requirements of PEMC and the IMO for the operation and administration of the WESM;
21. Clause 2.10.2.3 of the WESM Rules, meanwhile, provides that the proposed structure and level of market fees shall be developed by the Market Operator, subject to approval by the PEM Board prior to filing with the Honorable Commission for final approval;
22. Consistent with the WESM Rules, Section 10.02 of the Operating Agreement and the approved IMO Transition Plan, the approval by the PEM Board of the budgets of both Applicants PEMC and IEMOP is required prior to IEMOP's filing of the application for approval of the market fees with the Honorable Commission, which shall clearly indicate the

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<sup>6</sup> A copy of which is attached and made an integral part as Annex “F” of the *Joint Application*.

<sup>7</sup> A copy of which is attached and made an integral part as Annex “G” of the *Joint Application*.

market fees that respectively pertain to Applicants IEMOP and PEMC;

23. Section 10.05 of the Operating Agreement likewise provides that Applicant IEMOP shall be responsible for collecting the market fees through the WESM settlement process upon approval thereof by the Honorable Commission. It is also provided that Applicants PEMC and IEMOP shall agree on the manner and schedule of remittance of the market fees pertaining to PEMC considering that these are being collected by IEMOP only on behalf of PEMC;
24. For its part, PEMC deems itself as an indispensable party to the Application considering its substantial interest over the subject matter of the case, i.e., as the owner of the market fees pertaining to it. This is because the market fees being sought to be approved by this Honorable Commission cover the budget and revenue requirements of both Applicants, as the market operator and governing body of the WESM;
25. Pursuant to WESM Rules Clause 2.10.2.3 and the agreements between Applicants PEMC and the IEMOP in their Operating Agreement, the PEM Board approved the budgets of Applicants IEMOP and PEMC for CY 2023. These approvals are evidenced by the Secretary's Certificate dated 10 November 2022, a copy of which is hereto attached as *Annex "H"*, and made an integral part of this Application;
26. Prior to approval by the PEM Board, the IEMOP Board of Directors likewise approved Applicant IEMOP's budgetary requirements and authorized the joint filing of the application with Applicant PEMC, which approval is evidenced by the Secretary's Certificate dated 28 October 2022, a copy of which is hereto attached as *Annex "A-1"* and made an integral part of this Application;

#### TIMELINESS OF FILING THE APPLICATION

27. In the Decision dated 30 January 2008 in the CY 2007 Market Fees (MF) Application<sup>8</sup> of PEMC, the Honorable Commission directed the filing of the market fee application "not later than the first working day of July of the current year. xxx";
28. On 24 June 2022, Applicant IEMOP filed its Motion for Additional Time requesting for an additional period of thirty (30) days from 1 July 2022, or until 31 July 2022, within which to file the Application, considering that the PEM Board has yet to approve the budgets of Applicants IEMOP and PEMC;
29. On 29 July 2022, Applicant IEMOP filed its Second Motion for Additional Time requesting for an additional period of sixty (60) days from 31 July 2022, or until 29 September 2022, within which to file the Application, citing the need for

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<sup>8</sup> ERC Case No. 2007-124 RC.

more time to allow the PEM Board to approve the budgets of IEMOP and PEMC;

- 30. On 28 September 2022, Applicant IEMOP filed its Third Motion for Additional Time requesting for an additional period of thirty (30) days from 29 September 2022, or until 29 October 2022, within which to file the Application, as it has yet to receive the PEM Board’s action on the proposed budget it submitted to the PEM Board;
- 31. There being no approval provided by the PEM Board at the time, Applicant IEMOP was again constrained to request an additional period of thirty (30) days from 29 October 2022, or until 28 November 2022, within which to file to file the application for market fees;
- 32. This Application is thus filed within the reglementary period requested;

**PROPOSED MARKET FEES**

- 33. The factual allegations set forth above are re-pleaded in support of this Application;
- 34. Section 9 Rule 9 (c) of the Implementing Rules and Regulations of the EPIRA provides that “the cost of administering and operating the WESM shall be recovered by the IMO through a charge imposed on all WESM participants or WESM transactions, provided such charge shall be filed with and approved by the ERC, consistent with the WESM Rules”;
- 35. Applicant PEMC, as then the Autonomous Group Market Operator (AGMO), first filed its Application<sup>9</sup> for approval of the structure and level of the market fees in WESM in 2005 and proposed a dual structure of market fees comprised of the following categories-
  - (a) *Market Registration Fee to cover the expenses for registering WESM members; and,*
  - (b) *Market Transaction Fees to cover the budgetary requirements of PEMC in operating and governing the market.*
- 36. The Honorable Commission approved the foregoing structure of the market fees in its Decision dated 22 June 2006, further ruling that the total amount of Market Transaction Fees shall be apportioned among the generators according to the volume traded by each using the following formula:

$$\begin{aligned} \text{Rate} &= \frac{\text{Total Annual Market Transaction Fees (Php)} / 12}{\text{Total Generation Metered Quantity for the Month (kWh)}} \\ &= \text{P/kWh} \end{aligned}$$

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<sup>9</sup> ERC Case No. 2005-048 RC.

37. Following the above-mentioned market fee structure, the instant Application seeks for approval of the Market Transaction Fee for CY 2023 to cover the cost of Applicants IEMOP and PEMC in operating and governing the WESM, respectively. In view of the pronouncement of the Honorable Commission in the Decision dated 22 June 2020 in ERC Case No. 2015-160RC deferring resolution of the prayer for the approval of a single market fee structure, the Applicants no longer seek the approval of a Market Registration Fee;
38. The projected total budgetary requirement of both PEMC and IEMOP as approved by the PEM Board is ONE BILLION SIXTEEN MILLION SIX HUNDRED SIXTY THOUSAND PESOS (PhP1,016,660.00); broken down as follows:

Budget Component	IEMOP, PhPM	PEMC, PhPM	Total, PhPM
Personnel Services (PS)	265.40	188.64	454.04
Maintenance and Other Operating Expenses (MOOE)	273.78	206.94	480.72
Capital Expenditures (CAPEX)	41.73	40.17	81.90
<b>TOTAL</b>	<b>580.91</b>	<b>435.75</b>	<b>1,016.66</b>
Projected Generation, GWH (Luzon & Visayas)	94,930		94,930
<b>Fixed Market Fee Charge, PhP/kWh</b>	<b>0.0061</b>	<b>0.0046</b>	<b>0.0107</b>
Projected Generation, GWH (Luzon, Visayas & Mindanao)	109,185		109,185
<b>Fixed Market Fee Charge, PhP/kWh</b>	<b>0.0053</b>	<b>0.0040</b>	<b>0.0093</b>

39. As shown in the foregoing table, the projected budgetary requirements cover the following budget components for IEMOP and PEMC that are necessary to perform their respective functions:
- (a) *Personnel Services (PS)* pertain to the salaries and benefits of the employees;
  - (b) *Maintenance and Other Operating Expenses (MOOE)* include, among other things, honorarium, rent, utilities, repairs and maintenance, contracted services, conference, insurance, advertising and promotion, taxes and dues, training, travel and transportation, materials and supplies and subscriptions, the cost for market operations audit and metering review;
  - (c) *Capital Expenditures (CAPEX)* consist of purchase, enhancements and upgrades to the market governance systems, corporate infrastructure, and purchase of service vehicles;
40. A discussion of the specific budgetary allocations falling within the foregoing cost components and their justifications are provided in the judicial affidavits of witnesses that are attached and made integral parts of this Application;

41. Applicants respectfully submit that the budgetary requirement for CY 2023 is sufficiently indicative of their requirements for the medium term, as these already consider the following:
- (a) Cost of governing and operating the WESM with two separate organizations performing market governance and market operations functions;
  - (b) Organizational structures or tables of organization of the two organizations designed in accordance with their respective functions as envisioned by the two organizations, and not merely to accommodate the then existing manpower complement of PEMC. There are no significant changes in IEMOP's manpower complement over the medium term. As for PEMC, its Modified Table of Organization which was approved on December 2020 by the PEM Board reflects an additional manpower for eleven (11) positions;
  - (c) The aggregate IEMOP and PEMC budgetary requirements upon which the proposed Fixed Market Fee Charge and Market Fees are based do not include the pre-establishment expenses for the commercial operations of WESM in the Mindanao grid. This is consistent with the Honorable Commission's directive in its Order dated 11 July 2017 in ERC Case No. 2015-160RC, thus:

“                        XXX                        XXX                        XXX

*As the above discussed expenses are to be incurred in the upcoming establishment of the WESM in Mindanao, the Commission recognizes that the pre-operating expenses should not be charged to Luzon & Visayas customers. The separate apportionment of expenses between Luzon-Visayas WESM and Mindanao WESM is significant considering that in the absence of interconnection by the Mindanao grid, the WESM Mindanao will be a market separate from the Luzon and Visayas WESM.*

XXX XXX XXX

Furthermore, considering that the total amount sourced from the collected fines and penalties are from Luzon's and Visayas' customers, the same shall be recovered from Mindanao WESM customers upon the establishment of the commercial operations of WESM in Mindanao. Following the launch and establishment of the WESM in Mindanao, PEMC shall subsequently file its budgetary requirements for the continuous administration and operation of WESM Mindanao, including the cost recovery mechanism for the pre-operations of WESM Mindanao.

- (d) Further, the aggregate budgetary requirements of IEMOP and PEMC do not include the corresponding costs of implementing market developments pursuant to more recent policy and regulatory issuances, which shall be covered by a separate application to be filed by the Applicants with the Honorable Commission;
42. Moreover, the amounts proposed by the Applicants are net of applicable taxes, such as corporate income and value-added taxes, and without prejudice to the filing of an application to cover such taxes, especially in light of BIR Ruling No. OT-323-2021 dated 24 August 2021. In the said Ruling, the Bureau of Internal revenue, among others, ruled that Applicant IEMOP is not a tax-exempt corporation under Section 30 of the NIRC, as amended, and that the market fees it collects from market participants to defray the cost of operations of the WESM is subject to income tax and, consequently, to withholding tax. Applicant IEMOP has since filed a Petition for Review of the said Ruling with the Court of Tax Appeals, docketed as CTA Case No. 10885 and entitled “Independent Electricity Market Operator of the Philippines, Inc. v. Commissioner of Internal Revenue and Secretary of Finance”, where it is pending as of date. The Application does not also cover possible changes in expenses due to changes in law, rules or regulations, compliance with other regulatory requirements and other external factors;
43. Based on initial indicative figures, the estimated market fee charge is PhP0.0093/kWh based on the Luzon Visayas and Mindanao energy forecast of 109,185 GWh. The energy forecast is attached as *Annex “I”* and is made an integral part of this Application;
44. The market fee charge shall be recovered from Luzon and Visayas generators, and in Mindanao upon the actual commercial operations of WESM in Mindanao. This is consistent with the pronouncement of the Honorable Commission in its Order dated 11 July 2017 in ERC Case No. 2015-160RC, thus:

"                XXX                XXX                XXX

As the above-discussed expenses are to be incurred in the upcoming establishment of the WESM in Mindanao, the Commission recognizes that the pre-operating expenses should not be charged to Luzon & Visayas customers. The separate apportionment of expenses between Luzon-Visayas WESM and Mindanao WESM is significant considering that in the absence of interconnection by the Mindanao grid, the WESM Mindanao will be a market separate from the Luzon and Visayas WESM.

xxx                      xxx                      xxx

Furthermore, considering that the total amount sourced from the collected fines and penalties are from Luzon’s and Visayas’ customers, the same shall be recovered from Mindanao WESM customers upon the establishment of the commercial operations of WESM in Mindanao. Following the launch and establishment of the WESM in Mindanao, PEMC shall subsequently file its budgetary requirements for the continuous administration and operation of WESM Mindanao, including the cost recovery mechanism for the pre-operations of WESM Mindanao.

xxx                      xxx                      xxx”

Imposition        on        Generation  
Company-Trading Participants

45. Pursuant to the previous approvals of the Honorable Commission, the market fee charge/rate shall be collected from the generation companies registered in the WESM and shall be assessed based on their actual generation. Thus, the amount of market fees that will be collected monthly shall be calculated by multiplying the market fee charge/rate by the actual metered generation metered quantities, in kWh, for the month, as follows:

*Market Fee Rate (PhP/kWh) = Total Annual Market Fee/12*  
*Total Generation Metered Quantity*

As previously mentioned, the market fee charge shall be recovered from Luzon and Visayas, and in Mindanao upon the actual commercial operations of WESM in Mindanao.

46. Should it be necessary, Applicants shall file for adjustment of the market fee charge prior to the commencement of the commercial operations of the trading of reserves in the WESM, which adjustment shall consider the inclusion of scheduled reserves in determining the Fixed Market Fee Charge as well as the additional budgetary requirements for Applicants IEMOP and PEMC, if any, in operating and governing the trading of reserves.

Compliance with Reporting and  
Policy Requirements

47. Applicants IEMOP and PEMC, consistent with their obligations under the WESM Rules, shall submit to the Honorable Commission their annual financial reports, which shall include, among other matters, information on the utilization of the market fees;

48. Moreover, the general policies in the collection and utilization of the market fees laid down by the Honorable Commission in ERC Case No. 2007-124 RC, as may be applicable, have been and will continue to be complied with, foremost of which is that expenses will never exceed the total approved budget;
49. Additionally, Applicants IEMOP and PEMC shall comply with the policies laid down in DOE Department Circular No. 2018-01-0002, which prescribes the conditions for the effective and efficient transition to the IMO, as follows:
  - (i) Section 4.3 mandates that the IMO shall operate on a non-profit basis;
  - (ii) Section 5.4 provides that the IMO shall have fiscal autonomy from PEMC;
  - (iii) Section 5.5 requires that the IMO apply for the approval of the market fees to the Honorable Commission and that the same shall have minimal impact to the consumers;
  - (iv) Section 7.6 provides that the performance standards to be enforced upon the IMO by the PEM Board shall include financial performance standards which shall provide for an executive compensation policy that outlines the process and procedures that will be applied in reviewing and approving the total compensation paid to senior executives and key employees of PEMC and the IMO; and

Section 7.7 directs the IMO, upon approval of the PEM Board, to file the application for market fees, which shall cover the budget and revenue requirements of PEMC and the IMO for the operation and administration of the WESM, with the Honorable Commission for approval.

*Motion for Issuance of Provisional Authority*

50. The factual allegations set forth above are re-pleaded in support of the Motion for Issuance of Provisional Authority;
51. As in any enterprise, sufficiency of resources is imperative considering the need to finance even the minimum requirements for a normal level of operation. Such need is more pronounced in a highly dynamic platform such as the WESM, which is being operated on a 24x7 basis and is highly critical to sustaining a transparent and competitive electricity market. Indeed, Applicants IEMOP and PEMC, as the Market Operator and Governance Arm, respectively, of the WESM, must be assured of adequate financial support to enable both entities to perform their respective responsibilities under the EPIRA and the WESM Rules and market manuals;
52. In the Decision dated 20 May 2020 in the Market Fees Application docketed as ERC Case No. 2014-092 RC, the Honorable Commission approved the same with modification, authorized the imposition of market transaction fee for Calendar Year 2015 in the amount of

PhP447,470,026.06 on WESM participants in the Luzon and Visayas grids. The Honorable Commission likewise issued its Decision dated 22 June 2020 in the Market Fees Application docketed as ERC Case No. 2015-160 RC, authorized the imposition of market transaction fee for Calendar Year 2016 in the amount of PhP486,248,467.71 and for Calendar Year 2017 in the amount of PhP486,441,602.85, on WESM participants in the Luzon and Visayas grids. The motions for reconsideration filed on the cited decisions have since been denied but petitions for review have been filed by PEMC with the Court of Appeals, which remain pending as of this date;

53. Further, in the Decision dated 16 March 2022, in the Market Fees Application docketed as ERC Case No. 2017-095 RC, the Honorable Commission approved the same with modification, authorized the imposition of market transaction fee for Calendar Year 2018 in the amount of PhP448,966,163.25 on WESM participants in the Luzon and Visayas grids. Applicant PEMC has since filed a motion for reconsideration of the said Decision which is now pending resolution;
54. Moreover, in the Order dated 16 June 2022 in the Market Fees Application docketed as ERC Case No. 2019-088 RC, the Honorable Commission authorized and capped the authorized level of market fees for Calendar Years 2019-2020 at the approved market fees for Calendar Year 2018 by way of grant of interim relief. Applicants IEMOP and PEMC have separately filed motions for reconsideration of the said Order which have yet to be resolved by the Honorable Commission;
55. In compliance with the directive of the Honorable Commission to impose the most recent approved market fees level, Applicants IEMOP and PEMC have capped the market fees collection for Calendar Year 2022 to the approved market fees for Calendar Year 2018. Needless to state, the approved market fee level is grossly inadequate to sustain the efficient operations of Applicants IEMOP and PEMC;
56. Since the two entities are incorporated as non-stock and non-profit private companies which are mandated to remain so by virtue of policy directive, each relies solely on the market fees as approved by the Honorable Commission for their revenue requirements. Given the substantial cuts and disallowances ordered in the recent issuances of the Honorable Commission in the preceding years' market fees applications, Applicants IEMOP and PEMC have both suffered and reported deficits as early as Calendar Year 2020, especially in light of the fact that the recently approved market fee levels are significantly lower than the amounts reported in the budget utilization reports submitted by Applicants IEMOP and PEMC for the relevant year;
57. At its current level, the prevailing market fee for the WESM are grossly insufficient to cover the budget requirements for calendar year 2023 especially in view of the market

development initiatives that are mandated to be implemented through policy and regulatory issuances and the effect of inflation on the maintenance of market systems supporting the operations and governance of the WESM, including other logistical requirements;

58. Thus, Applicants respectfully pray for the issuance of a provisional authority for Applicant IEMOP, as the Market Operator of the WESM, to impose the proposed market fee charge of PhPo.0093/kWh to all generation companies registered in the WESM based on their actual generation, in kWh, in behalf of the Applicants, to support their operation pending resolution of the instant Application;
59. In support of this Application and the motion for issuance of provisional authority, Applicants herein submit the following documents, copies of which are hereto attached and made integral parts thereof:

Annex	Document
J	Judicial Affidavit of Ms. Mary Anne T. Santiago, Controllershship Manager of the Corporate Services Department of IEMOP, dated 18 November 2022
J-1	IEMOP Proposed Budgetary Requirements and Detailed Descriptions dated 18 November 2022
K	Judicial Affidavit of Mr. Salvador D. Subaran, Chief Information Systems and Technology Officer of IEMOP, dated 18 November 2022
L	Judicial Affidavit of Mr. Herbie C. Ngirngir, Chief Financial Officer of PEMC, dated 18 November 2022
L-1	PEMC Proposed Budgetary Requirements CY 2023 and Detailed Descriptions of the Budget Components
M	Judicial Affidavit of Mr. Patrick S. Fernandez, Head of the Information Systems and Technology Department of PEMC, dated 18 November 2022
M-1	Details of Cost Estimates of the Customized IT Systems (PEMC)

60. In accordance with the guidelines laid down by the Honorable Commission in its Decision dated 20 May 2020 in the Market Fees Application docketed as ERC Case No. 2014-092 RC and Decision dated 22 June 2020 in the Market Fees Application docketed as ERC Case No. 2015-160 RC, the Applicant submits the following supporting documents:

Annex	Documentary Requirement	Submitted Document
<i>Personnel Services</i>		
N	Detailed list of filled-up positions with the corresponding salaries as of 30 June 2022	IEMOP Master list of Employees as of 30 June 2022
O		PEMC Master list of Employees as of 30 June 2022

P	Reasonable level of allowances	Organization Assessment and Compensation and Benefits Review dated June 2018  IEMOP Proposed Budgetary Requirements and Detailed Descriptions for CY 2023
Q	Overtime Policy, if any	IEMOP Proposed Budgetary Requirements and Detailed Descriptions for CY 2023
R		PEMC Compensation and Benefits Policy
<i>Maintenance and Other Operating Expenses</i>		
S	Latest contract of Rental and Contracted Services	IEMOP Contracts on Rental and Contracted Services
T		PEMC Contracts on Rental and Contracted Services
U	Inventory and historical usage of materials and supplies for the past three (3) years	IEMOP Inventory and Historical Usage of Materials and Supplies
V		PEMC Inventory and Historical Usage of Materials and Supplies
<i>Capital Expenditures</i>		
K	Market Study of upward adjustment of CAPEX budget items	Judicial Affidavit of Mr. Salvador D. Subaran, Chief Information Systems and Technology Officer of IEMOP, dated 18 November 2022
M		Judicial Affidavit of Mr. Patrick S. Fernandez, Head of the Information Systems and Technology Department of PEMC, dated 18 November 2022
W	Inventory and Aging of Equipment	IEMOP Inventory and Aging of Equipment
X		PEMC Inventory and Aging of Equipment
Y		Market Fee Rate Computation

Compliance with Pre-Filing Requirements

61.

In compliance with the pre-filing requirements for the instant Application and Motion, pursuant to Rule 6 of the ERC Rules of Practice and Procedure, Applicant herein submits the following documents, which are made integral parts hereof:

Annex	Document
Z	Acknowledgment of City Council Secretary, Sangguniang Panlungsod of Pasig City
AA	Affidavit of Service
BB	Affidavit of Publication
CC	Complete copy of newspaper
DD	Certification of City Council Secretary, Sangguniang Panlungsod of Pasig City
EE	Affidavit of Service

*Motion for Confidential Treatment of Information*

62. Applicants respectfully move for the confidential treatment of the IEMOP Masterlist of Employees as of 30 June 2022, PEMC Masterlist of Employees as of 30 June 2022 and the Organization Assessment and Compensation and Benefits Review dated June 2018 hereto attached as Annexes “N”, “O”, and “P”, respectively, copies of which are submitted as password-protected files which form part of Applicant’s submission;
63. The cited documents should be accorded confidential treatment and protected from public disclosure, as well as kept separate from the records of this case during the pendency of the proceedings in the instant case, and after the termination thereof, for the following reasons: (i) the master list of employees which indicate the corresponding salary of the employee are confidential in nature and are subject to confidentiality provisions under the employment contract executed between the employer and employee; (ii) the Data Privacy Act (Republic Act No. 101073) ensures the protection of personal information from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual, such as those contained in the Master list of Employees of both Applicants IEMOP and PEMC; and (iii) the disclosure of the contents thereof may be a source of competitive advantage for the recipient of the information and Applicants IEMOP and/or PEMC will be vulnerable to pirating and loss of key personnel, or may become a basis for discontent and comparison among the relevant parties;
64. Applicants request that the same be protected from public disclosure and kept separate from the records of this case considering the highly sensitive and confidential nature of the information contained in these documents, pursuant to Section 1, Rule 4 of the ERC Rules of Practice and Procedure, which reads:

**RULE 4 - CONFIDENTIAL INFORMATION**

Section 1. Request for Confidential Treatment of Information. - A party to a proceeding before the Commission may move for information to be treated as confidential.

The motion shall:

(a) Describe therein with particularity the information to be treated as confidential, stating the specific grounds thereof, and specifying the period during which the information must not be disclosed; and

(b) Be accompanied with one (1) copy of the document that contains the information sought to be treated as confidential, placed in a sealed envelope, with the envelope and each page thereof stamped with the word "Confidential". The sealed envelope shall be accompanied by an index enumerating the contents thereof with sufficient particularity.

The movant shall serve the other parties with the motion but not copies of the documents and/or information sought to be treated as confidential.

If the information for which confidentiality is requested is part of the attachments to an application, petition or pleading, the same must comply with this Section by incorporating therein the motion.

The movant has the burden to establish that the information is entitled to such confidentiality."

65. Further, in compliance with the requirement under Section 7, Rule 3 of the ERC Rules of Practice and Procedure, the pdf and MS Word files of the instant pleading are submitted as well as an MS Excel file of the rate computation. Meanwhile, the pdf files of the documents herein attached as annexes are submitted to the Honorable Commission.

**PRAYER**

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Commission:

- (i) grant Applicants' prayer for the issuance of a provisional authority authorizing IEMOP to impose a MARKET FEE CHARGE of PhPo.0093/kWh to all generation companies registered in the WESM based on their actual generation, in kWh, pending resolution of the instant Application;
- (ii) after due notice and hearing, render judgment APPROVING the proposed market fees for CY 2023 for Applicants IEMOP and PEMC in the total amount of ONE BILLION SIXTEEN MILLION SIX HUNDRED SIXTY THOUSAND PESOS (PhP1,016,660.00);

- (iii) confirming the confidentiality of the IEMOP Master list of Employees as of 30 June 2022, PEMC Master list of Employees as of 30 June 2022 and the Organization Assessment and Compensation and Benefits Review dated June 2018 hereto attached as Annexes “N”, “O” and “P” and directing the said documents be treated as confidential and protected from public disclosure during the pendency of the proceedings in the instant case, and after the termination thereof and in a manner deemed appropriate by the Honorable Commission in accordance with Rule 4 of the ERC Rules of Practice and Procedure.

Applicants IEMOP and PEMC pray for such other reliefs just and equitable under the premises.

Finding the said *Joint Application* to be sufficient in form with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and venues, or online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020<sup>10</sup> and Resolution No. 01, Series of 2021<sup>11</sup> (ERC Revised Rules of Practice and Procedure):

Date	Venue/Platform	Activity
<b>21 March 2023</b> (Tuesday) at nine o'clock in the morning (9:00 A.M.)	<b>Energy Regulatory Commission, Hearing Room, 11<sup>th</sup> Floor, Exquadra Tower, 1 Jade Drive, Ortigas Center, Brgy. San Antonio, Pasig City</b>	Determination of compliance with jurisdictional requirements, and Expository Presentation for Luzon Stakeholders
<b>28 March 2023</b> (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	<b>Energy Regulatory Commission, Visayas Area Operations Division (VAOD), 7<sup>th</sup> Floor, Kepwealth Building, Samar Loop, Cebu Business Park</b>	Expository Presentation for Visayas Stakeholders

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<sup>10</sup> A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.  
<sup>11</sup> A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Venue/Platform	Activity
<b>04 April 2023</b> (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	<b>Energy Regulatory Commission, Mindanao Area Operations Division (MAOD), 6<sup>th</sup> Floor, BIZ Bldg., c/o BORMAHECO, Inc., 209 J.P. Laurel Avenue, Bajada, Davao City</b>	Expository Presentation for Mindanao Stakeholders
<b>14 April 2023</b> (Friday) at nine o'clock in the morning (9:00 A.M.)	<b>Microsoft Teams or Zoom Application</b>	Pre-Trial Conference and Presentation of Evidence
<b>21 April 2023</b> (Friday) at nine o'clock in the morning (9:00 A.M.)		Presentation of Evidence
<b>28 April 2023</b> (Friday) at nine o'clock in the morning (9:00 A.M.)		Presentation of Evidence

Applicants PEMC and IEMOP are directed to attend the said hearings at the designated venues.

**RELATIVE THERETO**, PEMC and IEMOP are hereby directed to:

- 1) Cause the publication of the attached *Notice of Public/Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Public/Virtual Hearing* the Office of the Mayor of Pasig City and the Local Government Unit (LGU) legislative body of Pasig City, for the appropriate posting thereof on their respective bulletin boards;

- 3) Inform the consumers within the affected area, by any other means available and appropriate, of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Public/Virtual Hearing* the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives and attend the scheduled hearings; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial hearing, PEMC and IEMOP must submit to the Commission via electronic mail (e-mail) at [docket@erc.ph](mailto:docket@erc.ph), copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), the scanned copies of their **written compliance** with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked, the following:

- 1) The evidence of publication of the attached *Notice of Public/Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Public/Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Public/Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned City Mayor, and its LGU legislative body or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by PEMC and IEMOP to inform the consumers within the affected area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public/Virtual Hearing* by the OSG, the

COA, and the Committees on Energy of both Houses of Congress;

- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, by all those making requests therefor; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, PEMC and IEMOP are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publication and certifications issued by the concerned Office of the City Mayor, and its Local Legislative Body, and to submit proof of posting thereof.

PEMC and IEMOP and all interested parties are also required to submit via e-mail at [docket@erc.ph](mailto:docket@erc.ph), copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), at least five (5) calendar days before the date of the scheduled hearing and Pre-trial Conference, their respective **Pre-Trial Briefs** containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

PEMC and IEMOP must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at least five (5) calendar days before the date of the scheduled initial hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of PEMC and IEMOP to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

PEMC and IEMOP must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Joint Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

PEMC and IEMOP are hereby directed to file a copy of their **Expository Presentation** via e-mail at [doCKET@erc.ph](mailto:doCKET@erc.ph), copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), at least five (5) calendar days prior to the scheduled public hearing. PEMC and IEMOP shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentation, at least five (5) calendar days prior to the scheduled hearing.

PEMC and IEMOP are hereby directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Finally, PEMC and IEMOP, including their authorized representative/s and witness/es, are hereby directed to provide the Commission, thru [legal.virtualhearings@erc.ph](mailto:legal.virtualhearings@erc.ph), with their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

**SO ORDERED.**

Pasig City, 21 February 2023.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

**FLORESINDA G. BALDO-DIGAL**  
*Commissioner*

  
LS: MVM/LSP/MCCG



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**Copy Furnished:**

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7. Senate Committee on Energy  
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